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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,771	08/21/2003	Philippe Briand	NONY 3.0-008	8763
530	7590	01/15/2009	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				SHAVER, KEVIN P
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: PHILIPPE BRIAND

Application No. 10/645,771
Technology Center 3700

Mailed: January 15, 2009

Before TOI JOHNSON *Review Paralegal*
JOHNSON, *Review Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on May 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated May 5, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters.< While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 3-7 of the Appeal Brief is deficient because it does not separately map independent claims 17-19 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a

summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated August 8, 2005. There is no indication on the record that the Examiner has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed May 5, 2006 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief;

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4) consider the Information Disclosure Statement filed August 8,
2005; and

5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the
Board of Patent Appeals and Interferences at 571-272-9797.

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090